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Supreme Court of the United States

OCTOBER TERM, 1962

No. 68

NATHANIEL WRIGHT, ET AL., PETITIONERS,

vs.

GEORGIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR CERTIORARI FILED FEBRUARY 17, 1962
CERTIORARI GRANTED JUNE 25, 1962

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 68

NATHANIEL WRIGHT, ET AL., PETITIONERS,

vs.

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

INDEX

	Original	Print
Proceedings in the Supreme Court of the State of Georgia	1	1
Bill of exceptions	1	1
Judge's certificate to bill of exceptions	9	7
Record from the City Court of Savannah, Georgia	15	8
Accusation and endorsements thereon	15	8
Pleas of not guilty	17	10
Verdict of the jury	18	10
Sentence as to Charlie L. Smart, Roscoe White, James W. Thomas, Benjamin Carter and Judson Ford	18	10
Sentence as to Nathaniel Wright	18	11
General demurrers and order overruling same	19	11
Rulings of the Court	22	14
Motion for acquittal and denial thereof	22	14
Motion of Nathaniel Wright for new trial, order to show cause and denial of motion	26	17
Motion of Charles L. Smart for new trial, order to show cause and denial of motion	30	20
Motion of Roscoe White for new trial, order to show cause and denial of motion	34	24

RECORD PRESS, PRINTERS, NEW YORK, N. Y., AUGUST, 1962

	Original	Print
Record from the City Court of Savannah, Georgia —Continued		
Motion of James W. Thomas for new trial, order to show cause and denial of motion	38	27
Motion of Benjamin Carter for new trial, order to show cause and denial of motion	42	31
Motion of Judson Ford for new trial, order to show cause and denial of motion	46	34
Brief of the evidence	50	38
Testimony of G. H. Thompson—		
direct	50	38
cross	52	40
redirect	53	42
recross	53	42
redirect	54	42
Carl Hager—		
direct	54	42
cross	55	43
redirect	57	46
recross	58	47
C. C. Dickerson—		
direct	59	48
cross	59	48
G. W. Hillis—		
direct	60	49
cross	61	50
redirect	61	50
recross	61	50
Order of consolidation	63	51
Opinion, Quillian, J.	67	52
Judgment	75	58
Motion for rehearing	76	58
Order denying motion for rehearing	80	60
Clerk's certificate (omitted in printing)	81	60
Order allowing certiorari	82	60
Charge of the court by Judge Alexander	83	61

[fol. 1]

IN THE SUPREME COURT OF GEORGIA

GEORGIA)
CHATHAM COUNTY)

TO THE PRESENT TERM OF THE SUPREME COURT OF GEORGIA

NATHANIEL WRIGHT,
CHARLES L. SMART,
ROSCO WHITE,
JAMES W. THOMAS,
BENJAMIN CARTER and
JUDSON FORD,

Plaintiffs-In-Error

—against—

STATE OF GEORGIA

Defendant-In-Error

IN ERROR FROM THE CITY COURT OF SAVANNAH, GEORGIA.

In which the case is entitled.

STATE OF GEORGIA

—against—

NATHANIEL WRIGHT,
CHARLES L. SMART,
ROSCO WHITE,
JAMES W. THOMAS,
BENJAMIN CARTER, and
JUDSON FORD

BILL OF EXCEPTIONS

Now Comes, Nathaniel Wright, Charles L. Smart, Rosco White, James W. Thomas, Benjamin Carter and Judson Ford, as Plaintiffs-in-error, and file this their Bill of Exceptions in which the State of Georgia is the Defendant-in-error.

Be It Remembered that, Plaintiffs-in-error were brought up for trial in the City of Savannah, Georgia, Honorable Columbus E. Alexander, Judge, Presiding, on the 18th day of May, 1961, said Plaintiffs-in-error being charged with violation of Section 26-5301 of the Code of Georgia.

Be It Further Remembered that, the trial of said case proceeded and a Jury was stricken. However, before arraignment and before pleading to the accusation therein, Plaintiffs-in-error filed a General Demurrer to said accusation upon the grounds that the Statute upon which it was based, to-wit: Section 26-5301 of the Code of Georgia, was unconstitutional. The General Demurrer was overruled by Honorable Columbus E. Alexander, Judge, presid-

ing. Evidence was then introduced by the State at the [fol. 2] close of which Counsel for the Defendants made a Motion to Acquit. After argument of Counsel in the absence of the Jury, the Motion to Acquit was overruled by Honorable Columbus E. Alexander, Judge, Presiding. The Jury was recalled and after argument of Counsel and the charge of the Court in said case, the Jury returned a verdict of guilty, whereupon The Honorable Columbus E. Alexander, Judge of said Court, sentenced each Defendant to pay a fine of $100.00 or serve five months under the jurisdiction of the State Board of Corrections, with the exception of Defendant, Nathaniel Wright who was sentenced to pay a fine of $125.00 or serve six months under the jurisdiction of the State Board of Corrections.

Be It Further Remembered that, within the time prescribed by Law, and on the 23rd day of May, 1961, Defendants duly filed their Motions for New Trial, which case was regularly set down for hearing on the 23rd of June, 1961. The Honorable Columbus E. Alexander, Judge, presiding, continued the Hearing on said Motion until the 21st day of July, 1961, at which time said Motion for New Trial and Brief of Evidence was submitted to the Court without argument of Counsel. Said Motions for New Trial were considered by the Court and on the 24th day of July, 1961, the Honorable Columbus E. Alexander, Judge of said Court, entered an Order overruling said Motions for New Trial on each and every ground. On the 17th day of August, 1961, the Honorable Columbus E. Alexander, Judge of said Court, issued an Order permitting the cases of Plaintiffs-in-error to be consolidated as said cases were predicated upon identical circumstances and facts and involved the same defensive pleas and the same questions of Law.

Plaintiffs-in-error make the following assignments of Error:

[fol. 3] 1. Plaintiffs-in-error in due time filed the following General Demurrer to the accusations:

"GENERAL DEMURRERS

NOW COMES the Defendants in the above named and stated case and before arraignment and before pleading to the accusation therein, and demur thereto, and for grounds of demurrer, say:

1. These Defendants demur to said accusation upon the ground that the Statute upon which said accusation is based and under which Defendants, all being Negroes, were arrested and charged, to-wit: Section 26-5301 of the Code of Georgia, "ANY TWO OR MORE PERSONS WHO SHALL ASSEMBLE FOR THE PURPOSE OF DISTURBING THE PUBLIC PEACE OR COMMITTING ANY UNLAWFUL ACT, AND SHALL NOT DISPERSE ON BEING COMMANDED TO DO SO BY A JUDGE, JUSTICE, SHERIFF, CONSTABLE, CORONER OR OTHER PEACE OFFICER, SHALL BE GUILTY OF A MISDEMEANOR", is so vague that Defendants are not put on notice as to what criminal act they have allegedly committed, rendering it impossible to answer the charge or make a legal defense, thus denying to Defendants due process of Law secured to them by the Fourteenth Amendment to the United States Constitution.

2. These Defendants demur to said accusation upon the ground that the Statute upon which said accusation is based and under which Defendants, all being Negroes, were arrested and charged, to-wit: Section 26-5301 of the Code of Georgia, as set out in "Paragraph 1" above, is unconstitutional in that said Statute is unconscionably vague in that nowhere in said Statute does there appear a definition of disturbing the public peace or committing any unlawful act. The absence of definition of these terms in sufficient specificity denies due process of Law guaranteed [fol. 4] by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Georgia.

3. These Defendants demur to said accusation upon the ground that the Statute upon which said accusation is based and under which Defendants, all being Negroes, were arrested and charged, to-wit: Section 26-5301 of the Code of Georgia, as set out in "Paragraph 1" above, is uncon-

stitutional as applied to these Defendants to enforce racial discrimination with respect to municipally owned recreational facilities, in that any Statute so used is unconstitutional as applied, because the Fourteenth Amendment to the United States Constitution requires that no State shall make any discrimination based on race with respect to governmentally owned facilities.

4. These Defendants demur to said accusation upon the ground that the arrest of said Defendants under Section 26-5301 of the Code of Georgia, as set out in "Paragraph 1" above, was in fact pursuant to the policy, custom and usage of the State of Georgia, which compels segregation of races in municipally owned places of public recreation contrary to the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution.

5. These Defendants demur to said accusation on the ground that the Statute upon which said accusation is based and under which Defendants, all being Negroes, were arrested and charged, to-wit: Section 26-5301 of the Code of Georgia, as set out in "Paragraph 1" above, vests in said Judge, Justice, Sheriff, Constable, Coroner or any other peace officer, the untramelled and arbitrary authority to predetermine the commission or the intent to commit an offense under said Statute. Defendants under said Statute are not apprized of what acts or act they are forbidden to [fol. 5] commit, said determination being left solely to the discretion of the said peace officer. Said Statute is therefore so vague, capricious, arbitrary and unreasonable as to violate the due process clause of the Fourteenth Amendment to the United States Constitution.

These Defendants pray that each and all of the foregoing grounds of demurrer be examined into by the Court and that said accusation be quashed upon each and all of said grounds."

The Honorable Columbus E. Alexander, Judge, presiding, overruled said General Demurrers upon each and every ground, to which ruling Plaintiffs-in-error excepted, now except and assign the same as error upon the ground that it was contrary to Law.

2. At the close of the State's evidence, Plaintiffs-in-error made the following Motion to Dismiss:

Motion

Mr. Gadsden: I would like to make a Motion for Acquittal, Your Honor, based on this Georgia Statute, Section 26-5301; a Statute which prohibits "Unlawful Assembly" for the purpose of disturbing the public peace. The State has not established the fact that they assembled there for the purpose of disturbing the public peace or for committing any unlawful act; the only evidence in this case is that they were there for the purpose of playing basketball, the State's own witness show that, and it is not within the purview of this Statute to have a conviction when it doesn't meet all of the terms and elements of the Law. There is no evidence here before this Court and Jury that the Defendants went, there for the purpose of disturbing the public peace other than circumstantial evidence, and our position is that when circumstantial evi-
[fol. 6] dence is relied upon to convict a person it must have no other reasonable explanation than the one upon which the State is relying. Now if the State is basing its case upon the fact that these Defendants went there for the purpose of disturbing the public peace the only evidence it has to sustain that is the fact that they had on ordinary clothing, and as far as I can determine from the evidence here today that is all they have to show an attempt to disturb the public peace, and there is no other offense involved whatsoever. The only evidence before this Court today is that these Defendants went there to play basketball and that they played basketball until stopped by the police officers, and that is the reason why we are asking this Court to direct a verdict for acquittal in this case; the State has failed to carry the burden in that respect.

It is a question of "Intent" and, certainly, there is no evidence as to their intent. All of the evidence they have is circumstantial, and I think that the Law is settled on the fact that where there is circumstantial evidence, and when there are two different conclusions, this, certainly, cannot be used to sustain a conviction and, therefore, we

respectfully ask this Court to direct a verdict of acquittal in this case.

Judge: Motion for directed verdict overruled.

The Honorable Columbus E. Alexander, Judge, presiding, overruled said Motion to Dismiss, to which ruling Plaintiffs-in-error excepted, now except and assign the same as error upon the ground that it was contrary to Law, and that the same should have been granted because the evidence revealed that no crime had been committed by the Plaintiffs-in-error.

3. Plaintiffs-in-error, as hereinabove set out, filed Motions of New Trial on the 23rd day of May, 1961, and on the [fol. 7] 24th day of July, 1961, the Honorable Columbus E. Alexander, Judge of said Court, overruled said Motions on each and every ground, therein stated, to which ruling Plaintiffs-in-error excepted, now except and assign the same as error upon the ground that it was contrary to Law.

4. The Honorable Columbus E. Alexander, Judge, presiding, at the trial of said case, sentenced each Defendant to pay a fine of $100.00 or serve five months under the jurisdiction of the State Board of Corrections with the exception of Defendant, Nathaniel Wright who was sentenced to pay a fine of $125.00 or serve six months under the jurisdiction of the State Board of Corrections, to which judgment Plaintiffs-in-error excepted, now except and assign the same as error upon the ground that it was contrary to Law.

Plaintiffs-in-error specify, as being material to a clear understanding of the errors complained of, the following portions of the record:

1. Accusation Number 21074 together with all entries thereon together with the pleas of Not Guilty.

2. The verdict of the Jury together with the judgment and sentence of the Court signed by the Honorable Columbus E. Alexander, Judge, then presiding, dated May 23, 1961.

3. General Demurrers filed by Plaintiffs-in-error before arraignment and before pleading to the accusations, together with the rulings of the Court thereon.

4. The Motion to Dismiss submitted at the close of the State's evidence and the ruling of Court thereon, as set out in *Rulings of the Court* approved by Honorable Columbus E. Alexander, Judge, then presiding.

5. Motions for New Trial filed by Plaintiffs-in-error, [fol. 8] Order continuing said Motion, dated and filed on the 21st day of June, 1961. An order overruling said Motions for New Trial, dated and filed on the 24th day of July, 1961, and signed by Honorable Columbus E. Alexander, Judge of the City Court of Savannah, Georgia.

6. The Brief of Evidence and Approval of said Brief of Evidence by Honorable Columbus E. Alexander, Judge, then presiding, filed on the 24th day of July, 1961.

7. Order permitting consolidation of said cases, signed by Honorable Columbus E. Alexander, Judge, presiding, dated and filed on the 17th day of August, 1961.

And Now Comes the Plaintiffs-in-error, within the time provided by Law and, assigning error on all the rulings complained of as being contrary to Law, tender this their Bill of Exceptions and pray that the same be certified as true and transmitted to the Supreme Court of the State of Georgia, in order that the alleged errors be considered and corrected, all as provided by Law.

The Supreme Court of Georgia, and not the Court of Appeals, has jurisdiction of this Bill of Exceptions, for the reason that the same involves the constitutionality of a statute of the State of Georgia.

Plaintiffs-in-error most respectfully submit their Bill of Exceptions.

/s/ E. H. Gadsden, B. Clarence Mayfield, Attorneys for Plaintiffs-In-Error, 458½ West Broad Street, Savannah, Georgia.

[fol. 9]

Judge's Certificate to Bill of Exceptions

I do certify that the foregoing Bill of Exceptions is true and contains all of the evidence and specifies all of the record material to clear understanding of the errors complained of, and The Clerk of the City Court of Savannah,

Chatham County, Georgia, is hereby directed to make out a complete copy of such portions of the record as are in this Bill of Exceptions specified, and certify them as such, and cause them to be transmitted to the Present Term of the Supreme Court of Georgia, in order that the errors alleged to have been committed may be considered and corrected.

This 18th day of August, 1961.

/s/ COLUMBUS E. ALEXANDER, Judge, City Court of Savannah, Chatham County, Georgia.

[fol. 15]

IN THE CITY COURT OF SAVANNAH, GEORGIA

ACCUSATION AND ENDORSEMENTS THEREON

State of Georgia)
County of Chatham)
City of Savannah)

And now on this 28th day of April in the year of our Lord one thousand nine hundred and sixty-one comes Andrew J. Ryan, Jr., Solicitor General of the Eastern Judicial Circuit of Georgia, who prosecutes for the State of Georgia, in the City Court of Savannah, and by accusation made on oath, and in accordance with the statutes in such cases made and provided, in the name and behalf of the Citizens of Georgia, charges and accuses Benjamin Carter, James W. Thomas, (~~Gavon M. King~~), Roscoe White, Charlie L. Smart and Judson Ferd and Nathaniel Wright of the County of Chatham and State aforesaid with the offense of a misdemeanor: for that the said Defendants in the County of Chatham and State of Georgia aforesaid, on the 23rd day of January in the year of our Lord one thousand nine hundred and sixty-one. In that the said Defendants did assemble at Daffin Park for the purpose of disturbing the public peace and refused to disburse (sic) on being commanded to do so by Sheriff, Constable, and Peace Officer, to wit: ~~W. H. Thompson and G. W. Hillis~~, contrary to the laws of said State, the good order, peace and dignity thereof.

/s/ ANDREW J. RYAN, JR., Solicitor General of the Eastern Judicial Circuit of Georgia.

[fol. 16]

No. 21,074

IN THE CITY COURT OF SAVANNAH

TERM—MAY, 1961.

VIOLATION OF GEORGIA LAWS 26-5301 CODE OF 1933
A MISDEMEANOR

STATE

VS

NATHANIEL WRIGHT
CHARLIE L. SMART
~~(Gavon M. King)~~
JAMES W. THOMAS
BENJAMIN CARTER
JUDSON FORD
ROSCOE WHITE

ACCUSATION FOUND

This 28th day of April, 1961.

Filed in office this 28th day of April, 1961.

JESSE W. MOORE
Dept. Clerk City Court of Savannah

By ANDREW J. RYAN, JR.
Solicitor General E. J. C. of Ga.

G. W. HILLIS
Prosecutor

Witnesses for the State

G. W. HILLIS
W. H. THOMPSON
C. C. DICKERSON
CARL HAGER

[fol. 17]

IN THE CITY COURT OF SAVANNAH

PLEAS OF NOT GUILTY—May 18, 1961

And now on this 18th day of May, 1961, in Open Court comes the said Nathaniel Wright, Charlie L. Smart, Roscoe White, James W. Thomas, Benjamin Carter, Judson Ford, and waives indictment or presentment by a Grand Jury, and arraignment and trial by a Petit Jury, and for plea in this their behalf says they are Not Guilty, and puts themselves upon the Court.

B. Clarence Mayfield, E. H. Gadsden, Attorneys for Defendants.

The State says he is guilty and will so prove.

Andrew J. Ryan, Jr., Solicitor General E. J. C. of Georgia.

[fol. 18]

IN THE CITY COURT OF SAVANNAH

VERDICT OF THE JURY—May 18, 1961

May 18, 1961.

We, the Jury, find the Defendants guilty.

L. L. Black, Foreman.

IN THE CITY COURT OF SAVANNAH

SENTENCE OF THE COURT AS TO CHARLIE L. SMART, ROSCOE WHITE, JAMES W. THOMAS, BENJAMIN CARTER, JUDSON FORD—May 18, 1961

I find the defendants guilty, whereupon, it is considered, ordered and adjudged that the said defendants do pay a fine of $100.00 Each, but if the said defendants fail to pay the said fine, it is ordered that in lieu thereof they serve

Five Months Each under the jurisdiction of the State Board of Corrections.

This May 18th, 1961.

/s/ COLUMBUS E. ALEXANDER, Judge, City Court of Savannah.

IN THE CITY COURT OF SAVANNAH

SENTENCE OF THE COURT AS TO NATHANIEL WRIGHT —May 18, 1961

I find the defendant Nathaniel Wright, guilty, whereupon, it is considered, ordered and adjudged that the said defendant do pay a fine of $125.00, but if the said defendant fails to pay the said fine, it is ordered that in lieu thereof he serve Six Months, under the jurisdiction of the State Board of Corrections.

This May 18th, 1961.

/s/ COLUMBUS E. ALEXANDER, Judge, City Court of Savannah.

[fol. 19]

IN THE CITY COURT OF SAVANNAH

[Title omitted]

GENERAL DEMURRERS AND ORDER OVERRULING SAME —May 18, 1961

Now Comes the Defendants in the above named and stated case and before arraignment and before pleading to the accusation therein, and demur thereto, and for grounds of demurrer, say:

1. These Defendants demur to said accusation upon the ground that the Statute upon which said accusation is based and under which Defendants, all being Negroes, were arrested and charged, to-wit: Section 26-5301 of the Code of Georgia, "ANY TWO OR MORE PERSONS WHO SHALL ASSEMBLE FOR THE PURPOSE OF

DISTURBING THE PUBLIC PEACE OR COMMITTING ANY UNLAWFUL ACT, AND SHALL NOT DISPERSE ON BEING COMMANDED TO DO SO BY A JUDGE, JUSTICE, SHERIFF, CONSTABLE, CORONER, OR OTHER PEACE OFFICERS, SHALL BE GUILTY OF A MISDEMEANOR", is so vague that Defendants are not put on notice as to what criminal act they have allegedly committed, rendering it impossible to answer the charge or make a legal defense, thus denying to Defendants due process of law secured to them by the Fourteenth Amendment to the United States Constitution.

2. These Defendants demur to said accusation upon the ground that the Statute upon which said accusation is based and under which Defendants, all being negroes, were arrested and charged, to-wit: Section 26-5301 of the Code of Georgia, as set out in "Paragraph 1" above, is unconstitutional in that said Statute is unconscionably vague in that nowhere in said Statute does there appear a definition of disturbing the public peace or committing any unlawful [fol. 20] act. The absence of definition of these terms in sufficient specificity denies due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Georgia.

3. These Defendants demur to said accusation upon the ground that the Statute upon which said accusation is based and under which Defendants, all being Negroes, were arrested and charged, to-wit: Section 26-5301 of the Code of Georgia, as set out in "Paragraph 1" above, is unconstitutional as applied to these Defendants to enforce racial discrimination with respect to municipally owned recreational facilities, in that any Statute so used is unconstitutional as applied, because the Fourteenth Amendment to the United States Constitution requires that no State shall make any discrimination based on race with respect to governmentally owned facilities.

4. These Defendants demur to said accusation upon the ground that the arrest of said Defendants under Section 26-5301 of the Code of Georgia, as set out in "Paragraph 1" above, was in fact pursuant to the policy, custom and usage of the State of Georgia, which compels segregation

of races in municipally owned places of public recreation contrary to the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution.

5. These Defendants demur to said accusation on the ground that the Statute upon which said accusation is based and under which defendants, all being Negroes, were arrested and charged, to-wit: Section 26-5301 of the Code of Georgia, as set out in "Paragraph 1" above, vests in said Judge, Justice, Sheriff, Constable, Coroner, or other peace officers, the untramelled and arbitrary authority to predetermine the commission or the intent to commit an offense under said Statute. Defendants under said Statute is not apprized of what acts or act they are forbidden to commit, said determination being left solely to the discretion of the said peace officers. Said Statute is therefore so vague, capricious, arbitrary and unreasonable as to violate the due process clause of the Fourteenth Amend-
[fol. 21] ment to the United States Constitution.

These Defendants pray that each and all of the foregoing grounds of demurrer be examined into by the Court and that said accusation be quashed upon each and all of said grounds.

....., Attorney for Defendants.

General Demurrer filed in Clerk's Office this May 18, 1961.

Jeff F. Dickey, Clerk, City Court of Savannah.

ORDER OVERRULING DEMURRERS

May 18, 1961.

The within demurrer is overruled on each and every ground.

/s/ Columbus E. Alexander, Judge, City Court of Savannah.

[fol. 22]

IN THE CITY COURT OF SAVANNAH

RULINGS OF THE COURT

See Brief of Evidence, Page 6—beginning of cross examination of Mr. Hager by Mr. Mayfield.

Mr. Garfunkel: I object to that, Your Honor, there has been no evidence that there was a request for an arrest. There was a report made that there were negroes playing there, but nobody requested the police to make an arrest, the police just went down there and made an arrest afterwards.

Judge: I think that is the case.

Mr. Mayfield: I would like to show to the Court and Jury that the policy, pursuant to Mr. Hager's examination here, was that they would have been permitted to remain there had the police officers not arrested them.

Judge: Ask questions following the evidence in the case.

IN THE CITY COURT OF SAVANNAH

MOTION FOR ACQUITTAL AND DENIAL THEREOF

Mr. Gadsden: I would like to make a Motion for acquittal, Your Honor, based on this Georgia Statute Section 26-5301; a Statute which prohibits "Unlawful Assembly" for the purpose of disturbing the public peace. The State has not established the fact that they assembled there for the purpose of disturbing the public peace or for committing any unlawful act; the only evidence in this case is that they were there for the purpose of playing basketball, the State's own witnesses show that, and it is not within the p. . .ew (sic) of this Statute to have a conviction when it doesn't meet all of the terms and elements of the law. There is no evidence here before this Court and Jury that the defendants went there for the purpose of disturbing the public peace other than circumstantial evidence, and our position is that when circumstantial evidence is relied upon to convict a person it must have no other reasonable explanation than the one upon which the State is relying. Now if the State is basing its case upon the

fact that these defendants went there for the purpose of disturbing the public peace the only evidence it had to sustain that is the fact that they had on ordinary clothes, and the State's own witnesses have testified to the fact that they know that people play basketball in their ordinary [fol. 23] clothing, and as far as I can determine from the evidence here today that is all they have to show an attempt to disturb the public peace, and there is no other offense involved whatsoever. The only evidence before this Court today is that these defendants went there to play basketball and that they played basketball until stopped by the police officers, and that is the reason why we are asking this Court to direct a verdict for acquittal in this case; the State has failed to carry the burden in that respect.

It is a question of 'intent' and, certainly, there is no evidence as to their intent. All of the evidence they have is circumstantial and I think that the law is settled on the fact that where there is circumstantial evidence, and when there are two different conclusions, this, certainly, cannot be used to sustain a conviction and, therefore, we respectfully ask this Court to direct a verdict of acquittal in this case.

Mr. Garfunkel: Your Honor, Mr. Hager gave a very good outline of way the playgrounds are being operated in Savannah, and he stated that in general the playgrounds were for those up to 16 years in age, however, that they had no objection to those over 16 years in age playing when the others are not scheduled to play on the playgrounds, he said that was because they didn't want to mix them and he explained why he didn't want to mix them, or why they didn't want to mix them.

He further explained, Your Honor, that at that particular time of day is when the schools do use the playgrounds, and particularly this playground, with which he happens to be very familiar because it is only a block away from his office, in fact, part of it surrounds his office—that there are two parochial schools within walking distance of this playground, and that further away is another school, which sends buses all during the day to bring students to play on this playground, and that they don't allow grown people

on the playgrounds during those periods—grown people, regardless of their color, they don't want on the playgrounds during that time. Of course, at this particular [fol. 24] moment the children were not there, but momentarily the children would come, they were going to come definitely, and a lot of them come after school, but all during school hours. Mr. Hager said that the children come all during school hours and are supervised by the teachers from the school.

Now, Your Honor, these defendants were there at a place and at the time where and when grownups should not have been on the playground. They are adopting the viewpoint that they went there solely for the purpose of playing basketball. The reason they went out there was to create a disturbance, and they say that 'the reason you are arresting us is not because of this, but because we are colored'.

They went out there not dressed to play basketball, they didn't know the rules of the playground, and that is the reason why we introduced that evidence, we introduced that evidence to show 'intent' to create a disturbance of the peace. The police certainly shouldn't have to wait until a disturbance is actually created and gets beyond control before they tell them that they will have to leave, and, certainly, to nip it in the bud before any difficulty or real trouble starts, that was the purpose of the Statute.

It is not the fact that they went out there and disturbed the peace by going out there, but it is the fact that they went out there for the sole purpose of disturbing the peace, and I think that all of the evidence shows that that is what this purpose was. That the police stepped in and told them to leave, but they continued to stay there after they told them to leave and continued to play, they continued to remain on the playground the police promptly arrested them.

Judge: Motion for directed verdict overruled.

[fol. 26]

IN THE CITY COURT OF SAVANNAH

STATE OF GEORGIA

vs.

NATHANIEL WRIGHT

MOTION FOR NEW TRIAL, ORDER TO SHOW CAUSE AND DENIAL OF MOTION

Verdict and judgment for the State at May term, 1961 of City Court on 18th day of May 1961.

The defendant being dissatisfied with the verdict and judgment in said case, comes during said term of Court, before the adjournment thereof, and within 10 days from said trial, and moves the court for a new trial upon the following grounds to wit:

1. Because the verdict is contrary to evidence and without evidence to support it.

2. Because the verdict is decidedly and strongly against the weight of evidence.

3. Because the verdict is contrary to law and the principles of justice and equity.

4. Because the Statute upon which said verdict is based is so vague that the defendants were not put on notice as to what criminal act they had allegedly committed, thus denying to defendants due process of law secured to them by the First and Fourteenth Amendments to the United States Constitution.

5. Because the Statute upon which said verdict is based is unconstitutional in that said Statute is unconscionably vague in that nowhere in said Statute does there appear a definition of disturbing the public peace or committing any unlawful act. The absence of definition of these terms in sufficient specificity denies due process of law guaranteed

by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Georgia.

6. Because the Statute upon which verdict is based vest said Judge, Justice, Sheriff, Constable, Coroner or other peace officers the untramelled and arbitrary authority to predetermine the commission of the intent to commit an offense under said Statute. Defendants under said Statute is not apprized of what act or acts they are forbidden to commit, said determination being left solely to the discre- [fol. 27] tion of the said Peace Officer. Said Statute is therefore so vague, capricious, arbitrary and unreasonable as to violate the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Whereupon he prays that these, his grounds for a new trial, be inquired of by the court, and that a new trial be granted him.

B. Clarence Mayfield, E. H. Gadsden, Atty's for Movant.

Read and consider. It is ordered that the State of Georgia show cause before me, at 3:00 o'clock on the 23rd day of June, 1961, why the foregoing motion should not be granted.

It is further ordered that the State of Georgia be served with a copy of this motion and order; and that this order act as supersedeas until the further order of the court, and upon the defendant giving a good and sufficient bond in the amount of $80.00.

If for any reason said motion is not heard and determined at the time and place above fixed, it is ordered that the same shall be heard and determined at such time and place in vacation as counsel may agree upon and upon failure to agree, then at such time and place as the presiding judge may fix on the application of either party, of which time and place and opposite party shall have at least five days' notice.

If for any reason this motion is not heard and determined before the beginning of the next term of this court, then the same shall stand on the docket until heard and determined at said term or thereafter.

It is further ordered that movant have, until hearing, whenever it may be, to prepare and present for approval a brief of the evidence in said case, and the presiding judge may enter his approval thereon at any time, either in term or vacation, and if the hearing of the motion shall be in vacation, and the brief of evidence has not been filed in the clerk's office at any time within ten days after motion is heard and determined.

[fol. 28] It appearing that it is impossible to make out and complete a brief of the testimony on said case before adjournment of court; it is ordered by the court that said motion be heard and determined in vacation and that movant may amend said motion at any time before the final hearing.

This 23rd day of May, 1961.

Columbus E. Alexander, Judge, City Court of Savannah.

Georgia)
Chatham County)

STATE OF GEORGIA

vs.

NATHANIEL WRIGHT

Due and legal service of the within and foregoing Motion for New Trial is hereby acknowledged, copy received.

This 22nd day of May, 1961.

Andrew J. Ryan, Jr., Solicitor General for the Eastern Judicial District of the State of Georgia.

Motion for New Trial, filed in office this 23rd day of May, 1961.

Jeff F. Dickey, Clerk, City Court of Savannah.

[fol. 29]

Order Continuing Hearing

The within Motion for New Trial is hereby continued to July 21st, 1961 at 3:00 P.M. All rights of movant are hereby reserved.

In Open Court, this 23rd day of June, 1961.

Columbus E. Alexander, Judge, City Court of Savannah.

Order Overruling Motion for New Trial

The within Motion for New Trial is hereby Overruled upon each and all of the grounds thereof.

In Open Court, this July 24th, 1961.

Columbus E. Alexander, Judge, City Court of Savannah.

[fol. 30]

IN THE CITY COURT OF SAVANNAH

STATE OF GEORGIA

VS.

CHARLES L. SMART

MOTION FOR NEW TRIAL, ORDER TO SHOW CAUSE AND DENIAL OF MOTION

Verdict and Judgment for the State at May Term, 1961, of City Court on 18th day of May, 1961.

The defendant being dissatisfied with the verdict and judgment in said case, comes during said term of Court, before the adjournment thereof, and within 10 days from said trial, and moves the court for a new trial upon the following grounds to wit:

1st. Because the verdict is contrary to evidence and without evidence to support it.

2nd. Because the verdict is decidedly and strongly against the weight of evidence.

3rd. Because the verdict is contrary to law and the principles of justice and equity.

4th. Because the Statute upon which said verdict is based is so vague that the defendants were not put on notice as to what criminal act they had allegedly committed, thus denying to defendants due process of law secured to them by the First and Fourteenth Amendments to the United States Constitution.

5th. Because the Statute upon which said verdict is based is unconstitutional in that said Statute is unconscionably vague in that nowhere in said Statute does there appear a definition of disturbing the public peace or committing any unlawful act. The absence of definition of these terms in sufficient specificity denies the process of law guaranteed by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Georgia.

6th. Because the Statute upon which verdict is based vest said Judge, Justice, Sheriff, Constable, Coroner or other peace officers the untrammeled and arbitrary authority to predetermine the commission of the intent to commit an offense under said Statute. Defendants under said Statute is not apprized of what act or acts they are forbidden to commit, said termination being left solely to the dis-[fol. 31] cretion of the said Peace Officer. Said Statute is therefore so vague, capricious, arbitrary and unreasonable as to violate the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Whereupon, he prays that these, his grounds for a new trial, be inquired of by the court, and that a new trial be granted him.

B. Clarence Mayfield, E. H. Gadsden, Attorneys for Movant.

Read and Considered. It is ordered that the State of Georgia show cause before me, at 3 o'clock on the 23rd day of June, 1961, why the foregoing motion should not be granted.

It is further ordered that the State of Georgia be served with a copy of this motion and order; and that this order act as a supersedeas until the further order of the court, and upon the defendant giving a good and sufficient bond in the amount of $80.00.

If for any reason said motion is not heard and determined at the time and place above fixed, it is ordered that the same shall be heard and determined at such time and place in vacation as counsel may agree upon, and upon a failure to agree, then at such time and place as the presiding judge may fix on the application of either party, of which time and place the opposite party shall have at least five days' notice.

If for any reason this motion is not heard and determined before the beginning of the next term of this court, then the same shall stand on the docket until heard and determined at said term or thereafter.

It is further ordered that movant have, until hearing, whenever it may be, to prepare and present for approval a brief of the evidence in said case, and the presiding judge may enter his approval thereon at any time, either in term or vacation, and if the hearing on the motion shall be in vacation, and the brief of the evidence has not been filed in the clerk's office at any time within ten days after motion is heard and determined.

[fol. 32] It appearing that it is impossible to make out and complete a brief of the testimony on said case before adjournment of court; it is ordered by the court that said motion be heard and determined in vacation and that movant may amend said motion at any time before the final hearing.

This 23rd day of May, 1961.

/s/ COLUMBUS E. ALEXANDER, Judge City Court of Savannah.

Acknowledgment of Service

State of Georgia)
County of Chatham)

STATE OF GEORGIA

vs.

CHARLES L. SMART

Due and Legal service of the within and foregoing Motion for New Trial is hereby acknowledged, copy received. This 22nd day of May, 1961.

/s/ Andrew J. Ryan, Jr., Solicitor General for the Eastern Judicial District of the State of Georgia.

Motion for New Trial as to Charles L. Smart filed in Clerk's Office this May 23, 1961.

Jeff F. Dickey, Clerk City Court of Savannah.

[fol. 33]

Order Continuing Hearing on Motion for New Trial

The within Motion for New Trial is hereby continued to July 21, 1961, at 3:00 P.M. All rights of movant are hereby reserved.

In Open Court this June 23, 1961.

Columbus E. Alexander, Judge, City Court of Savannah.

Order of Court Overruling Motion for New Trial

The within Motion for New Trial is hereby overruled upon each and all of the grounds thereof.

In Open Court this July 24, 1961.

Columbus E. Alexander, Judge, City Court of Savannah.

[fol. 34]

IN THE CITY COURT OF SAVANNAH

STATE OF GEORGIA

vs.

ROSCOE WHITE

MOTION FOR NEW TRIAL, ORDER TO SHOW CAUSE AND DENIAL OF MOTION

Verdict and Judgment for the State at May Term, 1961, of City Court on 18th day of May, 1961.

The defendant being dissatisfied with the verdict and judgment in said case, comes during said term of Court, before the adjournment thereof, and within 10 days from said trial, and moves the court for a new trial upon the following grounds, towit:

1. Because the verdict is contrary to evidence and without evidence to support it.

2. Because the verdict is decidedly and strongly against the weight of evidence.

3. Because the verdict is contrary to law and the principles of justice and equity.

4. Because the Statute upon which said verdict is based is so vague that the defendants were not put on notice as to what criminal act they had allegedly committed, thus denying to defendants due process of law secured to them by the First and Fourteenth Amendments to the United States Constitution.

5. Because the Statute upon which said verdict is based is unconstitutional in that said Statute is unconscionably vague in that nowhere in said Statute does there appear a definition of disturbing the public peace or committing any unlawful act. The absence of definition of these terms in sufficient specificity denies due process of law guaran-

teed by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Georgia.

6. Because the Statute upon which verdict is based vest said Judge, Justice, Sheriff, Constable, Coroner or other peace officers and untrammeled and arbitrary authority to predetermine the commission of the intent to commit an offense under said Statute. Defendants under said Statute is not apprized of what acts or act they are forbidden to commit, said determination being left solely to the discretion of the said Peace Officer. Said Statute is therefore [fol. 35] so vague, capricious, arbitrary and unreasonable as to violate the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Whereupon, he prays that these, his grounds for a new trial, be inquired of by the court, and that a new trial be granted him.

B. Clarence Mayfield, E. H. Gadsen, Attorneys for Movant.

Read and Considered. It is ordered that the State of Georgia show cause before me, at 3 o'clock on the 23rd day of June, 1961, why the foregoing motion should not be granted.

It is further ordered that the State of Georgia be served with a copy of this motion and order; and that this order act as a supersedeas until the further order of the court, and upon the defendant giving a good and sufficient bond in the amount of $80.00.

If for any reason said motion is not heard and determined at the time and place above fixed, it is ordered that the same shall be heard and determined at such time and place in vacation as counsel may agree upon, and upon failure to agree, then at such time and place as the presiding judge may fix on the application of either party, of which time and place the opposite party shall have at least five days' notice.

If for any reason this motion is not heard and determined before the beginning of the next term of this court, then

the same shall stand on the docket until heard and determined at said term or thereafter.

It is further ordered that movant have, until hearing, whenever it may be, to prepare and present for approval a brief of the evidence in said case, and the presiding judge may enter his approval thereon at any time, either in term or vacation, and if the hearing of the motion shall be in vacation, and the brief of evidence has not been filed in the clerk's office at any time within ten days after motion is heard and determined.

It appearing that it is impossible to make out and complete a brief of the testimony on said case before adjournment of court; it is ordered by the court that said motion be heard and determined in vacation and that movant may amend said motion at any time before the final hearing.

[fol. 36] This 23rd day of May, 1961.

/s/ Columbus E. Alexander, Judge City Court of Savannah.

Acknowledgment of Service

State of Georgia)
County of Chatham)

STATE OF GEORGIA

vs.

ROSCOE WHITE

Due and legal service of the within and foregoing motion for new trial is hereby acknowledged, copy received. This 22 day of May, 1961.

/s/ ANDREW J. RYAN, JR., Solicitor General for the Eastern Judicial District of the State of Georgia.

Motion for new trial as to Roscoe White filed in Clerk's Office this 23rd day of May, 1961.

Jeff F. Dickey, Clerk, City Court of Savannah

[fol. 37]

Order Continuing Hearing

The within Motion for New Trial is hereby continued to July 21, 1961, at 3:00 P.M. All rights of movant are hereby reserved.

In Open Court, this 23rd day of June, 1961.

Columbus E. Alexander, Judge, City Court of Savannah.

Order Overruling Motion for New Trial

The within Motion for New Trial is hereby Overruled upon each and all of the grounds thereof.

In Open Court, this 24th day of July, 1961.

Columbus E. Alexander, Judge, City Court of Savannah.

[fol. 38]

In the City Court of Savannah

State of Georgia

vs.

James W. Thomas

Motion for New Trial, Order to Show Cause and Denial of Motion

Verdict and Judgment for the State at May Term, 1961, of City Court on 18th day of May, 1961.

The defendant being dissatisfied with the verdict and judgment in said case, comes during said term of Court, before the adjournment thereof, and within 10 days from said trial, and moves the court for a new trial upon the following grounds, towit:

1st. Because the verdict is contrary to evidence and without evidence to support it.

2nd. Because the verdict is decidedly and strongly against the weight of evidence.

3rd. Because the verdict is contrary to law and the principles of justice and equity.

4th. Because the Statute upon which said verdict is based is so vague that the defendants were not put on notice as to what criminal act they had allegedly committed, thus denying to defendants due process of law secured to them by the First and Fourteenth Amendments to the United States Constitution.

5th. Because the Statute upon which said verdict is based is unconstitutional in that said Statute is unconscionably vague in that nowhere in said Statute does there appear a definition of disturbing the public peace or committing any unlawful act. The absence of definition of these terms in sufficient specificity denies due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Georgia.

6th. Because the Statute upon which verdict is based vest said Judge, Justice, Sheriff, Constable, Coroner or other peace officers the untrammeled and arbitrary authority to predetermine the commission of the intent to commit an offense under said Statute. Defendants under said Statute is not apprized of what act or acts they are forbidden to commit, said determination being left solely to the discretion of the said Peace Officer. Said Statute is [fol. 39] therefore so vague, capricious, arbitrary and unreasonable as to violate the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Whereupon, he prays that these, his grounds for a new trial, be inquired of by the Court, and that a new trial be granted him.

/s/ B. Clarence Mayfield, E. H. Gadsden, Attorneys for Movant.

Read and Considered. It is ordered that the State of Georgia show cause before me, at 3 o'clock on the 23rd day of June, 1961, why the foregoing motion should not be granted.

It is further ordered that the State of Georgia be served with a copy of this motion and order; and that this order act as a supersedeas until the further order of the court, and upon the defendant giving a good and sufficient bond in the amount of $80.00.

If for any reason said motion is not heard and determined at the time and place above fixed, it is ordered that the same shall be heard and determined at such time and place in vacation as counsel may agree upon, and upon failure to agree, then at such time and place as the presiding judge may fix on the application of either party, of which time and place the opposite party shall have at least five days' notice.

If for any reason this motion is not heard and determined before the beginning of the next term of this court, then the same shall stand on the docket until heard and determined at said term or thereafter.

It is further ordered that movant have, until hearing, whenever it may be, to prepare and present for approval a brief of the evidence in said case, and the presiding judge may enter his approval thereon at any time, either in term or vacation, and if the hearing of the motion shall be in vacation, and the brief of evidence has not been filed in the Clerk's office at any time within ten days after motion is heard and determined.

[fol. 40] It appearing that it is impossible to make out and complete a brief of the testimony on said case before adjournment of court; it is ordered by the court that said motion be heard and determined in vacation and that movant may amend said motion at any time before the final hearing.

This 23rd day of May, 1961.

/s/ Columbus E. Alexander, Judge, C.C.S.

State of Georgia)
County of Chatham)

STATE OF GEORGIA

vs.

JAMES W. THOMAS

Due and legal service of the within and foregoing motion for New Trial is hereby acknowledged, copy received.

This 22nd day of May, 1961.

/s/ Andrew J. Ryan, Jr., Solicitor General for the Eastern Judicial District of the State of Georgia.

Chatham County Courthouse
Room 310
Savannah, Georgia

Motion for a New Trial as to James W. Thomas, filed in Clerk's office this 23rd day of May, 1961.

Jeff F. Dickey, Clerk, City Court of Savannah.

[fol. 41]

Order Continuing Hearings

The within Motion for New Trial is hereby continued to July 21, 1961, at 3:00 P.M. All rights of movant are hereby reserved.

In Open Court, this 23rd day of June, 1961.

Columbus E. Alexander, Judge, C.C.S.

Order Overruling Motion for New Trial

The within Motion for New Trial is hereby Overruled upon each and all of the grounds thereof.

In Open Court, this 24th day of July, 1961.

Columbus E. Alexander, Judge, City Court Savannah.

[fol. 42]

IN THE CITY COURT OF SAVANNAH

STATE OF GEORGIA

VS.

BENJAMIN CARTER

MOTION FOR NEW TRIAL, ORDER TO SHOW CAUSE AND DENIAL OF MOTION

Verdict and judgment for the State at May term, 1961 of City Court on 18th day of May, 1961.

The Defendant being dissatisfied with the verdict and judgment in said case, comes during said term of Court, before the adjournment thereof, and within 10 days from said trial, and moves the court for a new trial upon the following grounds to wit:

1. Because the verdict is contrary to evidence and without evidence to support it.

2. Because the verdict is decidedly and strongly against the weight of evidence.

3. Because the verdict is contrary to law and the principles of justice and equity.

4. Because the Statute upon which said verdict is based is so vague that the defendants were not put on notice as to what criminal act they had allegedly committed, thus denying to defendants due process of law secured to them by the First and Fourteenth Amendments to the United States Constitution.

5. Because the Statute upon which said verdict is based is unconstitutional in that said Statute is unconscionably vague in that nowhere in said statute does there appear a definition of disturbing the public peace or committing any unlawful act. The absence of definition of these terms in sufficient specificity denies due process of law guaranteed

by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Georgia.

6. Because the Statute upon which verdict is based vest said Judge, Justice, Sheriff, Constable, Coroner or other peace officers the untrammeled and arbitrary authority to predetermine the commission of the intent to commit an offense under said Statute. Defendants under said Statute is not apprized of what act or acts they are forbidden to commit, said determination being left solely to the discretion of the said Peace Officer. Said Statute is therefore so vague, capricious, arbitrary and unreasonable as to violate the due process clause of the Fourteenth Amendment to the Constitution of the United States.

[fol. 43] Whereupon he prays that these, his grounds for a new trial, be inquired of by the court, and that a new trial be granted him.

B. Clarence Mayfield, E. H. Gadsden, Atty's for Movant.

Read and consider. It is ordered that the State of Georgia show cause before me, at 3:00 o'clock on the 23rd day of June, 1961, why the foregoing motion should not be granted.

It is further ordered that the State of Georgia be served with a copy of this motion and order; and that this order act as supersedeas until the further order of the court, and upon the defendant giving a good and sufficient bond in the amount of $80.00.

If for any reason said motion is not heard and determined at the time and place above fixed, it is ordered that the same shall be heard and determined at such time and place in vacation as counsel may agree upon, and upon failure to agree, then at such time and place as the presiding judge may fix on the application of either party, of which time and place the opposite party shall have at least five days notice.

If for any reason this motion is not heard and determined before the beginning of the next term of this court, then

the same shall stand on the docket until heard and determined at said term or thereafter.

It is further ordered that movant have, until hearing, whenever it may be, to prepare and present for approval a brief of the evidence in said case, and the presiding judge may enter his approval thereon at any time, either in term or vacation, and if the hearing of the motion shall be in vacation, and the brief of evidence has not been filed in the clerk's office at any time within ten days after motion is heard and determined.

[fol. 44] It appearing that it is impossible to make out and complete a brief of the testimony on said case before adjournment of court; it is ordered by the court that said motion be heard and determined in vacation and that movant may amend said motion at any time before the final hearing.

This 23rd day of May, 1961.

Columbus E. Alexander, Judge, City Court of Savannah.

State of Georgia)
County of Chatham)

STATE OF GEORGIA

VS.

BENJAMIN CARTER

Due and legal service of the within and foregoing Motion for New Trial is hereby acknowledged, copy received.

This 22nd day of May, 1961.

Andrew J. Ryan, Jr., Solicitor General for the Eastern Judicial District of the State of Georgia.

Chatham County Courthouse
Room 301
Savannah, Georgia

Motion for New Trial, filed in Office this 23rd day of May, 1961.

Jeff F. Dickey, Clerk, City Court of Savannah.

[fol. 45]

Order Continuing Hearing

The within Motion for New Trial is hereby continued to July 21, 1961 at 3:00 P.M. All rights of movant are hereby reserved.

In Open Court, this 23rd day of June, 1961.

Columbus E. Alexander, Judge, City Court of Savannah.

Order Overruling Motion for New Trial

The within Motion for New Trial is hereby Overruled upon each and all of the grounds thereof.

In Open Court, this 24th day of July, 1961.

Columbus E. Alexander, Judge, City Court of Savannah.

[fol. 46]

IN THE CITY COURT OF SAVANNAH

STATE OF GEORGIA

VS.

JUDSON FORD

MOTION FOR NEW TRIAL, ORDER TO SHOW CAUSE AND DENIAL OF MOTION

Verdict and judgment for the State at May term, 1961 of City Court on 18th day of May, 1961.

The defendant being dissatisfied with the verdict and judgment in said case, comes during said term of Court, before the adjournment thereof, and within 10 days from said trial, and moves the court for a new trial upon the following grounds to wit:

1. Because the verdict is contrary to evidence and without evidence to support it.

2. Because the verdict is decidedly and strongly against the weight of evidence.

3. Because the verdict is contrary to law and the principles of justice and equity.

4. Because the Statute upon which said verdict is based is so vague that the defendants were not put on notice as to what criminal act they had allegedly committed, thus denying to defendants due process of law secured to them by the First and Fourteenth Amendments to the United States Constitution.

5. Because the Statute upon which said verdict is based is unconstitutional in that said Statute is unconscionably vague in that nowhere in said Statute does there appear a definition of disturbing the public peace or committing any unlawful act. The absence of definition of these terms in sufficient specificity denies due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Georgia.

6. Because the Statute upon which verdict is based vest said Judge, Justice, Sheriff, Constable, Coroner or other peace officers the untrammeled and arbitrary authority to predetermine the commission of the intent to commit an offense under said Statute. Defendants under said Statute is not apprized of what act or acts they are forbidden to commit, said determination being left solely to the discretion of the said Peace Officer. Said Statute is therefore so vague, capricious, arbitrary and unreasonable as to violate the due process clause of the Fourteenth Amendment to the Constitution of the United States.

[fol. 47] Whereupon he prays that these, his grounds for a new trial, be inquired of by the court, and that a new trial be granted him.

B. Clarence Mayfield, E. H. Gadsden, Atty's for Movant.

Read and consider. It is ordered that the State of Georgia show cause before me, at 3:00 o'clock on the 23rd day of June, 1961, why the foregoing motion should not be granted.

It is further ordered that the State of Georgia be served with a copy of this motion and order; and that this order act as supersedeas until the further order of the court, and upon the defendant giving a good and sufficient bond in the amount of $80.00.

If for any reason said motion is not heard and determined at the time and place above fixed, it is ordered that the same shall be heard and determined at such time and place in vacation as counsel may agree upon, and upon failure to agree, then at such time and place as the presiding judge may fix on the application of either party, of which time and place the opposite party shall have at least five days notice.

If for any reason this motion is not heard and determined before the beginning of the next term of this court, then the same shall stand on the docket until heard and determined at said term or thereafter.

It is further ordered that movant have, until hearing, whenever it may be, to prepare and present for approval a brief of the evidence in said case, and the presiding judge may enter his approval thereon at any time, either in term or vacation, and if the hearing of the motion shall be in vacation, and the brief of evidence has not been filed in the clerk's office at any time within ten days after motion is heard and determined.

It appearing that it is impossible to make out and complete a brief of the testimony on said case before adjourn-

ment of court; it is ordered by the court that said motion be heard and determined in vacation and that movant may amend said motion at any time before the final hearing.

[fol. 48] This 23rd day of May, 1961.

Columbus E. Alexander, Judge, City Court of Savannah.

Chatham County)
Georgia)

STATE OF GEORGIA

vs.

JUDSON FORD

Due and legal service of the within and foregoing Motion for New Trial is hereby acknowledged, copy received.

This 12th day of May, 1961.

Andrew Ryan, Jr., Solicitor General for the Eastern Judicial District of the State of Georgia.

Chatham County Courthouse
Room 301
Savannah, Georgia

Motion for New Trial, filed in Clerk's office this 23rd day of May, 1961.

Jeff F. Dickey, Clerk, City Court of Savannah.

[fol. 49]

Order Continuing Hearing

The within Motion for New Trial is hereby continued to July 21st, 1961 at 3:00 P.M. All rights of movant are hereby reserved.

In Open Court, this 23rd day of June, 1961.

Columbus E. Alexander, Judge, City Court of Savannah.

Order Overruling Motion for New Trial

The within Motion for New Trial is hereby Overruled upon each and all of the grounds thereof.

In Open Court, this July 24th, 1961.

Columbus E. Alexander, Judge, City Court of Savannah.

[fol. 50]

IN THE CITY COURT OF SAVANNAH

Georgia)
Chatham County)

Criminal No. 21074

STATE OF GEORGIA, Plaintiff,

vs.

NATHANIEL WRIGHT, CHARLES L. SMART, ROSCOE WHITE, JAS. W. THOMAS, BENJAMIN CARTER, JUDSON FORD, Defendants.

Violating Section 26-5301 Code of Georgia—1933

Brief of the Evidence

Tried in the City Court of Savannah, Chatham County, Georgia, on May 18th, 1961, before the Honorable Columbus E. Alexander, Judge of said Court, with a jury.

APPEARANCES:

Sylvan A. Garfunkel, Esq., Asst. Solicitor General; Court House, Savannah, Ga., for the State.

E. A. Gadsden, Esq., B. C. Mayfield, Esq., Attorneys at law, Savannah, Georgia, for the Defendants.

And Thereupon G. H. THOMPSON duly sworn, testified:

My name is G. H. Thompson. I am a member of the Savannah Police Department, and I was a member of the

Savannah Police Department on or around January 23, 1961, and I was on duty around two o'clock, here in Savannah, Chatham County, Georgia. A white lady came up and told us about certain people being in Daffin Park and asked us certain questions about them—we were, at that time, at about the eastern end of Grayson Stadium, which is situated at the end of the Daffin Park area—Daffin Park consists of an area of about 50 acres and it is a recreational park. This white lady came up and gave us certain information and asked us certain questions about it, and we made an investigation at a basket ball court, in Daffin Park, which was about 500 feet west of where we were at the time we had our conversation with this white lady—Officer [fol. 51] G. W. Hillis was with me at the time, and as a result of the conversation with this white lady we rode over to this Basket Ball Court to investigate, and when we arrived at this Basket Ball Court we found around seven colored boys playing basket ball there on the Basket Ball Court.

Q. Are they here today?

A. Yes sir.

Q. Are some of them here?

A. Yes sir.

Q. Where are they?

A. Well, this one with the red stripe tie, that's one of them, and the other, sitting beside him on the right, and the one with the light shirt. That's the only three I recognize.

Brief continues:

As to their dress, they were pretty well dressed at that time; some of them had on dress shirts, some of them had on coats—not a dress coat, but a jacket. I didn't notice what particular type shoes they had on, as far as I know they didn't have 'tennis shoes' on. I am familiar with the type of shoes that people wear when they play basket ball, they didn't have that type of shoes on as well as I remember.

I think that these defendants ranged in age from 23 to 32.

There is a school nearby this Basket Ball Court, it is located at Washington Avenue and Bee Road, I mean, at Washington Avenue and Waters. There is another school on 44th Street—there are two schools nearby; I believe that they are both 'grammar' schools. I patrol that area and the children from these schools play there, they come there everyday I believe, I believe they come there every afternoon when they get out of school, and I believe they come there during recess. The school, I believe, gets out about 2:30 in the afternoon, and this was around 2:00 o'clock.

When I came up to these defendants I asked them to leave; I spoke to all of them as a group when I drove up there, and I asked them to leave twice, but they did not leave at that time. I gave them an opportunity to leave. One of the, I don't know which one it was, came up and asked me who gave me orders to come out there and by what authority I came out there, and I told him that I didn't need any orders to come out there, I believe the one that [fol. 52] asked me that is the third one there, sitting at the table in the Court Room here, the one there with the coat on, with the red button on it. The children from the schools, would have been out there shortly after that. The purpose of asking them to leave was to keep down trouble, which looked like to me might start—there were five or six cars driving around the park at the time, white people. They left only after they were put under arrest, they were put under arrest approximately 5 to 10 minutes after I told them to leave,—Officer Hillis is the one who put them under arrest —we called the police cruiser and it came and we put them in that. It seemed like to me that they were welcoming the arrests, because all of them piled into the car, Officer Hillis's car, at the time, and he had to stop them—Officer Hillis' car did not carry any of them, the cruiser carried them in, they waited in the car until the cruiser came, all seven of them, it was seven of them. Officer Dickerson came up, he was riding as Street Sergeant at the time, and I reported to him what had happened.

Cross Examination of Officer Thompson by Mr. Gadsden:

This matter first came to my attention when this white lady had this conversation with us, the lady who told us

that colored people were playing in the Basket Ball Court down there at Daffin Park, and that is the reason I went there, because some colored people were playing in the park. I did not ask this white lady how old these people were. As soon as I found out these were colored people I immediately went there.

I have seen people play basket ball without uniforms on. I hadn't paid too much attention to basketball, so I don't know if a man 32 years old would play that game or not, but it is possible that a person who is 32 could be playing basket ball, and it is possible for a person of twenty-three to be playing basketball too. Under ordinary circumstances I would not arrest boys for playing basketball in a public park. I have never made previous arrests in Daffin Park because people played basketball there, I don't have any knowledge myself if any certain age group is limited to any particular basketball Court, I don't know the rules of the City Recreational Department.

[fol. 53] I arrested these people for playing basket ball in Daffin Park. One reason was because they were negroes. I observed the conduct of these people, when they were on the basketball Court and they were doing nothing besides playing basket ball, they were just normally playing basket ball, and none of the children from the schools were there at that particular time.

I made these arrests around 2:00 o'clock, and the schools let out around 2:30 o'clock, and it would have been at least 30 minutes before any children would have been in this particular area.

This basketball Court is approximately 100 yards from Waters Avenue, and there is a north-south driveway, which goes right by the court, it circles the park—the driveway is about 15 yards out from the basket ball court, it runs on each side of it, I believe that it is Waring Drive that runs in from Waters Avenue and these driveways runs from Waring Drive. There were cars riding around on these driveways, at least five or six cars, I wouldn't say that that was unusual traffic for that time of day.

When I asked them to leave is when that party asked me as to what authority I was asking them to leave. I believe

that they asked Officer Hillis for his badge number. I don't think that it is unusual for one to inquire 'why' they are being arrested.

Redirect Examination by Mr. Garfunkel:

I believe that most of them had on dress pants, as far as I can remember. I have seen people playing basket ball, but I have never seen them come out dressed like that to play basketball. There have been colored children in Daffin Park, but I did not arrest those children, but I arrested these people because we were afraid of what was going to happen. Colored children have played in Daffin Park, and they have fished there.

Recross Examination by Mr. Gadsden:

I have observed colored children playing in Daffin Park, but not playing basketball, but I have observed them playing and fishing, we had gotten previous calls that they were fishing in there and such, but not playing basketball. I have never made an arrest in Daffin Park.
[fol. 54] sometimes they do and sometimes they don't. It is possible to play basketball in street clothes.

Redirect Examination by Mr. Garfunkel:

If I wanted to play basketball I would not go out there dressed up, not the way they were dressed.

Carl Hager duly sworn, testified:

Direct Examination by Mr. Garfunkel:

My name is Carl Hager, I am Superintendent of the Recreational Department of the City of Savannah. As superintendent I am over all of the playgrounds in the City of Savannah, Chatham County, Georgia; that includes Daffin Park and all the other parks that have playgrounds. These playgrounds are mostly in neighborhood areas. There are neighborhood areas where colored families live, and neighborhood areas where white people live, we try to

establish them in that manner, and, then, there are certain areas where they are mixed to a certain extent. We have a playground in the Park Extension, and that is a mixed areas for white and colored—a white section and a colored section—it is mostly white, but there are several colored sections within several blocks, and they are much closer now than they use to be. Wells Park is what we call a border-area and that is a mixed area—one side is colored and one side is white. The Daffin Park area, mostly around that area is mostly white. It has occurred, from time to time, that colored children would play in the Daffin Park area and in the Park Extension area, but no action had been taken, because it is legal, it is allowed, and nobody has said anything about it. I am familiar with the Daffin Park playground area, in fact, the office of the Recreational Department is in Daffin Park. That basket ball court is about a block from the office. I was advised that an arrest had been made, but they had all gone when I was told about it and I did know why the arrests had been made. The playground areas are basically for young children, say 15 to 16 and under, along that age group, we give priority to the playground to the younger children over the grown-ups, it made no difference as to whether they were white or colored. Anytime that we requested anyone to do something [fol. 55] and they refused we would ask the police to step in, if we would ask them to leave and they did not we would ask the police to step in. We have had reports that colored children have played in the Park Extension, but they were never arrested or told to leave.

We have had grown people to come out to Daffin Park and play soft-ball; we have soft-ball diamonds and also younger people play on them, but we try to regulate the times for playing on the diamonds so that there will not be a conflict between the older people and the younger ones, and we issue permits in all cases where we think there will be conflict, we try to regulate them. We do not have the Tennis Courts regulated at the present time, they are now on first come first serve basis, but we plan to regulate these.

Cross Examination by Mr. Mayfield:

Q. Mr. Hager, I would like to ask you if your office made the request for the arrest on February 21st?

Objection to above by Mr. Garfunkel—see rulings of the Court, page 1, top of page.

Brief continues:

There are no signs posted in conspicuous places around the park defining what hours certain age groups were to use particular areas of the park, but we do have signs saying that you do have to request permits from the office before using certain facilities, in other words, we designate the time ourselves as to what is to be carried out in those areas. I testified that if there was a conflict between the younger people and the older people using the park facilities the preference would be for the younger people to use *them*, but we have no objections to older people using the facilities if there are no younger people present or if they are not scheduled to be used by the younger people.

There are about 7 parks in the City in negro areas and about 14 in white areas, and that changes during the season of a year according to the leadership, and I might explain that we could set apart the one that is under leadership; we have areas that have equipment, but do not have leaders and we do not consider those play grounds, it is only those where we have paid leadership, like tennis courts, and at Daffin Park and at Cann Park, where we pay an individual [fol. 56] to open and close the playgrounds and regulate the use of them.

The parks in white areas are located as follows:

'Savannah Gardens'—Pensylvania near Jones; 'Avondale'—Texas Avenue and 'Victory Heights'—east 42nd Street, on the other side of Skidaway; 'Forrest Hills'—near DeRenne Ave. and Skidaway Road; 'Hull': 54th and Atlantic Avenue; 'Daffin Park'—Waters and Victory Drive; 'Garden Homes'—near Park Avenue and Cedar; 'Live Oak'—Park Avenue and Live Oak; 'Davant'—Perry and Lincoln; 'Wells'—38th and Montgomery; 'Forsyth'—Gaston and Bull; 'Fred Wessels'—Fred Wessels Housing Units.

The parks in negro areas are located as follows:

'Yamacraw Village'; 'Carver Village area'—West Gwinnett Street; 'Pearl Smith School', which is also out in that area; 'Cann'—Burroughs and W. 45th Street; 'Soldiers Field Area—Paulsen and Joe; 'Robert Hitch Housing Area. Now that is six of them, I can't think of the seventh at present.

It has been the custom to use the parks separately for the different races. I couldn't say whether or not a permit would or would not be issued to a person of color if that person came to the office the Recreational Department and requested a permit to play on the courts, but I am of the opinion that it would have been, we have never refused one, the request never has been made.

Grownups use Daffin Park at certain times and under certain conditions, but to be frank with you I have never seen any using the basketball courts, however grownups could use them if there was no other need for them. To some extent particular attire is required for use on the basketball court, because we feel some responsibility to the people, in reference to the proper attire worn—we don't want them playing on there with baseball spikes on their shoes, or track shoes, or, in some cases, certain types of other shoes like shoes worn on a tennis court. We would expect them to wear the usual basketball attire—short trunks and what have you, if they were playing in one of our supervised regulated programs, but we would probably not expect it if they were playing in an unregulated and unsupervised program, and it would be consistent with our program to allow persons to wear ordinary clothing on the courts if [fol. 57] they so chose to do so, I don't think that we would object to that. There is no minimum or maximum age limit for the use of basket ball courts, however, at the present time we have established a minimum—a maximum age limit of 16 years for any playground area. Programming is not so readily understood by lay people, by age grouping is taken into consideration in programming because we don't want the older people competing with the younger people, and we don't like to have them associating because we don't think that a younger person should learn too much from the

older person or vice versa, we don't think it conducive to good community relations, the building of character and the proper traits for younger people, and I think the school systems have followed somewhat the same procedure in segregating them in age groups, such as the younger school groups, the junior highs, and the high schools, and it is for the same purpose that we regulate our programs according to age groups and, sometimes, sexes also, and all of this is in accordance with, basically, a planned program. I could not answer the question as to whether everyone using the basketball courts come under the planned program, but at times they do use it when we are not putting a plan into action and when not using it, but I couldn't say when or where, because we are not there and we don't know. There is no regulation for playing on a Court when it is not in use and there is no one around.

Redirect Examination by Mr. Garfunkel:

On school days these courts and the playground area at Daffin Park are available for only certain age groups and they are only used at that time of day by the schools in that vicinity, it is, more or less, left available for them, that is the way we have our recreation setup.

Most of our playground areas are arranged according to the families living in that particular area, playgrounds where there are white families and playgrounds where there are colored families—most of them are arranged in that manner according to the areas. We do feel this, that playgrounds are established within a distance of one mile of the people who are expected to use them, and normally when we find that when a playground is established with that in mind that people who live within one mile of it will use it, so if we put one in a predominantly negro neighborhood, then, predominantly negroes would use it. [fol. 58] and the same would be true for the whites, but, of course, we can't always control that because we do not have the choice of locations where we would like to have them, and that is the reason why some could very easily become mixed areas, such as Park Extension, because that is within a mile of both white and colored, and that is the reason why both play in that area.

Recross Examination by Mr. Mayfield:

I don't know whether or not we had a planned program arranged for the day that these arrests were made, I would have to check my records. We do not have parks in colored areas that are comparable in size or comparable in facilities to Daffin Park, but colored boys do fish in the pond at Daffin Park. The size of the facilities would be determined by the area. Cann Park is probably our most complete area that is in a colored neighborhood, and on that we have a tennis court—and we use that court for basketball, we have swings, slides, soft ball field, a small practice field, which is also used for football, and it also has a concrete spray pool, picnic table, and a few other odds and ends of equipment, and it has a drinking fountain, and things of that nature, which would make it about as well equipped as any playground we have except for size.

I believe that the Cann Park basket ball court was completed on January 23, 1961.

Q. If your planned program did not have the 23rd of January, 1961, set aside for any particular activity would it have been permissible to use this basket ball court in Daffin Park in the absence of children.

A. I can't very well answer that question because you have several questions in one. First, I would like to say that normally we would not schedule anything for that time of the day because of the schools using the totals area there and, second, I would not know whether we had something scheduled without referring to my records. Now if the schools were not there and were not using it and we had no program planned we certainly would not have been concerned about other people using it. The schools use the area during school hours. The Parochial School uses it during recess and lunch periods and also for sport, as also the Lutheran School, and the public schools bring their students out there by bus and at various times during school [fol. 59] hours all day long, we never know when they are coming, and they use Cann Park the same way, I might add.

If it was compatible to our program we would grant a permit for the use of the basket ball court in Daffin Park to anyone regardless of race, creed or color, however, at that

time of day it would not be compatible to our program. If that basket ball court was not schedule] it would be compatible with our program for them to use it, and we would not mind them using it. If there was a permit issued there would be no objections as to race, creed or color.

C. C. DICKERSON duly sworn, testified:

Direct Examination by Mr. Garfunkel:

On January 23rd of this year I was a Street Sergeant with the Savannah Police Department. I was a Street Sergeant around two o'clock in the afternoon of that date when I received a call to go to the vicinity of Daffin Park. That was on a school day and school was in session on that day.

When I arrived there I found certain men in the custody of Officers Hillis and Thompson, these men are here today, they are all sitting at the table there with their two attorneys—there were seven originally, but there are only six of the defendants sitting at the table—Garvin King, age 19, hasn't shown up today.

These defendants were under arrest when I arrived. They called for the Street Sergeant, but before I got there I heard them call for the wagon also. When I arrived I found these defendants dressed up nicely, I don't think that all of them had suits on, but they had on nice pants and shoes—they were all dressed nice. I would say that they wasn't dressed for playing basketball, if I were playing basketball I would have on something more comfortable other than what they had on, all of the people were dressed nice though

Cross Examination of Mr. Dickerson by Mr. Gadsden:

All of the activities were over when I arrived there.
[fol. 60] I have played basketball, but along about the time I played basketball out in the country I didn't have on shoes, I was dressed in the custom and style of that time.

I have been a policeman for quite sometime. I have seen people playing on basketball courts in casual attire, but

I wouldn't say that I have seen them playing basketball while being dressed as nicely as these people were on this particular day, but I'd say that they sometimes play in their ordinary clothes, but I'd say also that they usually play in dungarees and khaki and slacks, but these people were dressed a little better than that.

I knew a basketball coach, who was thirty. Professional players get on up above thirty years in age sometimes, and I guess there are some people above thirty who play basketball.

G. W. Hillis duly sworn, testified:

Direct Examination by Mr. Garfunkel:

My name is G. W. Hillis, I am a police officer of the Savannah Police Department, and I was a member of and on duty with the Savannah Police Department on or about the 23rd day of January of this year; I was on duty then and I had on my police uniform. I was on duty with Officer Thompson, he also had on his police uniform, I was on duty around two o'clock on the afternoon of the date in the vicinity of Daffin Park, here in Savannah, Chatham County, Georgia, at around that time I received some information from a white lady as a result of that information I went with Officer Thompson, in a police automobile, to the basketball court in Daffin Park, here in Savannah, Chatham County, Georgia. When I arrived there I saw the defendants, they were playing basketball. Officer Thompson talked to them first, and then I talked to them. I asked them to leave, Officer Thompson had already asked them, I heard him ask them. They did not leave, and they did not stop playing until I told them they were under arrest. We called the wagon (cruiser). Officer Thompson told them that they would have to leave, he told them that at first, and they did have an opportunity to leave after he told them that. He asked them to leave, and then I asked them to leave after I saw they wasn't going to stop playing, and [fol. 61] when I asked them to leave one of them made a sarcastic remark, saying: "What did he say, I didn't hear him", he was trying to be sarcastic. When I told them to

leave there was one of them who was writing with a pencil and looking at our badge numbers. They all had an opportunity to leave before I arrested them, plenty of time to have left, but I told them to leave, they wouldn't leave and I put them under arrest.

Cross Examination by Mr. Mayfield:

When I arrived the defendants were playing basketball. They were not necessarily creating any disorder, they were just 'shooting at the goal', that's all they were doing, they wasn't disturbing anything.

Redirect Examination by Mr. Garfunkel:

I am familiar with the fact that there are schools in that area, and that children would be out there in about 15 minutes to play in that area.

Recross Examination by Mr. Mayfield:

The arrests were around two o'clock. The schools discharge their students around two-thirty, I think.

State Rests. 12:05 P.M. Defense Rests.

Motion by Mr. Gadsden—see rulings of the Court, beginning middle of page 1. (Jury excused)

* * * * * * *

[fol. 63]

IN THE CITY COURT OF SAVANNAH

[Title omitted]

ORDER OF CONSOLIDATION—August 17, 1961

It appearing to the Court that the above stated cases were tried in the City Court of Savannah on May 18, 1961, and that all defendants therein were found guilty and sentenced by the Court to pay $100.00 or serve 5 months subject to the Board of Corrections of the State of Georgia.

It further appearing to the Court that Counsel for the Defendants filed a Motion for a New Trial for each and every defendant on the 23rd day of May, 1961, and that said Motion was set for hearing on June 23, 1961, the Honorable Columbus E. Alexander, Judge, then presiding, continued the hearing on said Motion until the 21st day of July, 1961, at which time said Motion and Brief of Evidence was submitted to the Court without argument of Counsel. Said Motions for New Trial were considered by the Court and on the 24th day of July, 1961, the Honorable Columbus E. Alexander, Judge of said Court, entered an Order overruling said Motions for New Trial on each and every ground.

It further appearing to the Court that the Judgment and sentence in said cases are predicated upon similar circumstances and facts and involve the same defensive pleas and same question of law.

It is therefore ordered by the Court that said cases be consolidated and proceed to hearing before the Supreme Court of Georgia as if all said cases had been originally brought as such.

In Open Court, this 17th day of August, 1961.

Columbus E. Alexander, Judge, City Court of Savannah, Chatham County, Georgia.

Filed in office this 17th day of August, 1961. Beatrice M. Gill, Dept. Clerk, City Court, Savannah.

* * * * * * *

[fol. 67]

IN THE SUPREME COURT OF GEORGIA

Case No. 21430

WRIGHT, et al.,

v.

THE STATE.

OPINION—November 9, 1961

By the Court:

1. A mere recital in the brief of the defendants of the existence of an assignment of error, without argument or citation of authorities in its support, and without a statement that it is insisted upon by counsel, is insufficient to save it from being treated as abandoned.

2. It is not error in a criminal case for the trial judge to refuse to direct a verdict of acquittal.

3. A demurrer which seeks to add facts not apparent on the face of the accusation must fail as a speaking demurrer.

4. A Code section utilizing terms with an established common-law meaning, and which is itself of common-law origin, is sufficiently definite to apprise a person of common intelligence with a standard which he may use in determining its command; this more than satisfies the requirements of due process.

5. An officer is not vested with arbitrary authority when he only makes an arrest, and it is left to judicial processes to ascertain if the described components of a criminal act are present.

Submitted October 9, 1961—Decided November 9, 1961—Rehearing denied November 21, 1961.

Unlawful assembly; constitutional question. Savannah City Court. Before Judge Alexander.

[fol. 68] The defendants, Nathaniel Wright, Charles L. Smart, Roscoe(?) White, James W. Thomas, Benjamin Carter, and Judson Ford, were brought to trial in the City Court of Savannah for violation of Code §26-5301 which reads "Unlawful assemblies.—Any two or more persons who shall assemble for the purpose of disturbing the public peace or committing any unlawful act, and shall not disperse on being commanded to do so by a judge, justice, sheriff, constable, coroner, or other peace officer, shall be guilty of a misdemeanor." The gravamen of the offense, as detailed in the accusation, was: "In that the said defendants did assemble at Daffin Park for the purpose of disturbing the public peace and refused to disburse (sic) on being commanded to do so by sheriff, constable, and peace officer, to wit: W. H. Thompson and G. W. Hillis."

Before their arraignment and before pleading to the accusation, the defendants filed a general demurrer to the accusation, contending that for five enumerated reasons the Code section above cited is unconstitutional. The trial judge overruled the general demurrer, and evidence was then introduced by the State at the conclusion of which counsel for the defendants made a motion to acquit. After the argument of counsel, in the absence of the jury, the trial judge denied the motion to acquit. The jury was recalled and, after argument of counsel and the charge of the court, returned a verdict of guilty. Whereupon the trial judge sentenced each defendant to pay a fine of $100 or to serve five months imprisonment, with the exception of the defendant Wright, who was sentenced to pay a fine of $125 or to serve six months imprisonment.

The defendants filed a motion for new trial which was subsequently overruled on each and every ground. The [fol. 69] trial judge then issued an order permitting the defendants' cases to be consolidated since all the cases were predicated upon identical circumstances and facts, and involved the same defensive pleas and the same questions of law.

The defendants excepted and assign error on the overruling of their general demurrer, the refusal by the trial judge to direct a verdict of acquittal, the denial of their

motion for a new trial, and on the judgment sentencing the defendants. Each of these assignments of error will be considered in order inverse from that in which it is above presented.

E. H. Gadsden, B. Clarence Mayfield, for plaintiffs in error. Andrew J. Ryan, Solicitor-General, Sylvan A. Garfunkel, contra.

[fol. 70] Quillian, Justice. 1. In their bill of exceptions the defendants assign error on the judgment sentencing each defendant (fourth ground) and on the denial of their motion for a new trial (third ground). However, in their brief to this court they completely omitted the fourth ground and merely referred to the third ground by asking: "Did the court commit error in overruling plaintiff's in error motion for new trial?" There was no argument, citation of authority, or statement that such grounds were still relied upon. Therefore, the applicable rule, as laid down in Henderson v. Lott, 163 Ga. 326 (2) (136 SE 403), is: "Assignments of error not insisted upon by counsel in their briefs or otherwise will be treated by this court as abandoned. A mere recital in briefs of the existence of an assignment of error, without argument or citation of authorities in its support, and without a statement that it is insisted upon by counsel, is insufficient to save it from being treated as abandoned." Almand v. Pate, 143 Ga. 711 (1) (85 SE 909); Head v. Lee, 203 Ga. 191, 202 (45 SE 2d 666); The B-X Corp. v. Jeter, 210 Ga. 250 (4) (78 SE 2d 790).

2. The second ground upon which the defendants rely is that the trial judge erred in failing to direct a verdict of acquittal for the defendants at the conclusion of the State's evidence. It is not error in a criminal case to refuse to direct a verdict of not guilty. Winford v. State, 213 Ga. 396, 397 (99 SE 2d 120); Williams v. State, 206 Ga. 107 (10) (55 SE 2d 589); Coleman v. State, 211 Ga. 704 (2) (88 SE 2d 381); Baugh v. State, 211 Ga. 863 (1) (89 SE 2d 504).

3. The first ground in the bill of exceptions is that the trial judge erred in overruling their general demurrers to the accusation. The defendants urge five contentions as [fol. 71] to why Code §26-5301, per se and as applied, violates rights secured to them by the Constitutions of the United States and of Georgia. Contentions (3) and (4) attack the Code section in question as unconstitutional as applied, since it was used to enforce racial discrimination, and as unconstitutional in that the arrest was pursuant to the policy, custom, and usage of the State of Georgia, which compels segregation of the races.

Neither of these two contentions can be ascertained from an examination of the accusation. A demurrer may properly attack only those defects which appear on the face of the petition, indictment, or, in this case, accusation. A demurrer which seeks to add facts not so apparent or to supply extrinsic matters must fail as a speaking demurrer. Jackson v. State, 64 Ga. 344; Arthur v. State, 146 Ga. 827 (92 SE 637). See also Walters v. State, 90 Ga. App. 360, 365 (83 SE 2d 48).

4. Contentions (1) and (2) attack the Code section, on its face, as violative of due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and by the Georgia Constitution, arguing that said Code section is so vague that the defendants are not placed on notice as to what criminal act they have allegedly committed, rendering it impossible to answer the charge or to make legal defense, and unconscionably vague in that nowhere in the statute does there appear a definition of disturbing the public peace or committing any unlawful act.

Since the defendants were charged only with "disturbing the public peace," the alleged vagueness of "committing any unlawful act" need not be considered. Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (62 S. Ct. 766, 86 LE 1031); Whittle v. Jones, 198 Ga. 538, 544 (32 SE 2d 94); Kryder [fol. 72] v. State, 212 Ga. 272, 274 (91 SE 2d 612). Neither does the defendants' purported attack on the Code section under the Georgia Constitution raise any meritorious issue. In order to raise a question as to the constitutionality of a statute, the provision of the Constitution alleged to have

been violated must be clearly specified and designated, reference being made to the part, paragraph, or section. Clements v. Powell, 155 Ga. 278, 280 (8) (166 SE 624); Inlaw v. State, 168 Ga. 377 (1) (147 SE 881); Johns v. State, 18 Ga. 187, 188 (3) (178 SE 707); Manufacturers Trust Co. v. Wilby-Kincey Service Corp., 204 Ga. 273, 274 (49 SE 2d 514); Krasner v. Rutledge, 204 Ga. 380, 382 (49 SE 2d 864).

The United States Supreme Court has held that a statute is not unconscionably vague where its provisions employ words with a well-settled common-law meaning (Waters-Pierce Oil Co. v. Texas, 212 U.S. 86, 108-111, 29 S. Ct. 220, 53 LE 417); Nash v. United States, 229 U.S. 373, 376-378, 33 S. Ct. 780, 57 LE 1232; Hygrade Provision Co. v. Sherman, 266 U.S. 497, 502, 45 S. Ct. 141, 69 LE 402), approved in Connally v. General Const. Co., 269 U.S. 385, 391 (46 S. Ct. 126, 70 LE 322); or is not couched in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. Whitney v. California, 274 U.S. 357, 368 (47 S. Ct. 641, 71 LE 1095); Fox v. Washington, 236 U.S. 273, 276-278 (35 S. Ct. 383, 59 LE 573); Miller v. Strahl, 239 U.S. 426, 434 (36 S. Ct. 147, 60 LE 364); Omaechevarria v. Idaho, 246 U.S. 343, 348 (38 S. Ct. 323, 62 LE 763); United States v. Alford, 274 U.S. 264, 267 (47 S. Ct. 591, 71 LE 1040).

Here the term "disturbing the public peace" is of generic common law origin. Faulkner v. State, 166 Ga. 645, 665 (144 SE 193); 11 C.J.S. 817, §1. "Disturbing the peace" or its synonym, "breach of peace," has long been inherently [fol. 73] encompassed in our law and is prevalent in the various jurisdictions. 11 C.J.S. 817 et seq., §2 et seq.; 8 Am. Jur. 834 et seq., §3 et seq.

Further, the crime of unlawful assembly is itself of common-law origin, Reg. v. Pugh (1704), 87 Eng. Reprint 900, Rex v. Birt (1831), 172 Eng. Reprint 919, 91 C.J.S. 495, §1; 46 Am. Jur. 126, §2; is described in slightly varying forms in the vast majority of jurisdictions (Annot., 71 ALR 2d 875); and in our own State was codified in the Penal Code of 1816 (Ga. L. 1816, p. 178; Lamar's Comp. p. 592).

"The uncertainty in a statute which will amount to a denial of due process of law is not the difficulty of ascertaining whether close cases fall within or without the prohibition of the statute, but whether the standard established by the statute is so uncertain that it cannot be determined with reasonable definiteness that any particular act is disapproved; and a criminal statute is sufficiently definite if its terms furnish a test based on knowable criteria which men of common intelligence who come in contact with the statute may use with reasonable safety in determining its command." 163 A.L.R. 1108, Annotating Minnesota v. Lanesboro Produce Co., 221 Minn. 246 (21 NW 2d 792) (citing Nash v. United States, supra, United States v. Wurzbach, 280 U.S. 396, 50 S. Ct. 167, 74 LE 508, and Collins v. Com. of Kentucky, 234 U.S. 634, 34 S. Ct. 924, 58 LE 1510). The language of the Code section in question is pronounced in terms so lucid and unambiguous that a person of common intelligence would discern its meaning and apprehend with what violation he was charged. Farrar v. State, 187 Ga. 401 (200 SE 803); Fowler v. State, 189 Ga. 733 (8 SE 2d 77); Watson v. State, 192 Ga. 679 (16 SE 2d 426).

5. The last contention (5) assigned, that the Code sec- [fol. 74] tion confers untrammeled and arbitrary authority upon the arresting officer, has no merit since we have determined that the statute has a clear-cut standard to apprise one of what constitutes a criminal act and thus to guide the conduct of such officer. There is no usurpation of judicial authority, nor the improper delegation of judicial discretion, since the officer involved only makes the arrest when, in his discretion, he believes a crime to have been perpetrated. The innocence or guilt, beyond a reasonable doubt, of the accused must still be determined by judicial process.

This is a case of first impression in this State, and our research has failed to reveal any full-bench decisions from other jurisdictions on the exact question of the constitutionality of a similar unlawful-assembly statute. Nevertheless, see Cole v. Arkansas, 338 U.S. 345 (70 S. Ct. 172, 94 LE 155). However, by applying the well-recognized prin-

ciples and applicable tests above stated, we find no deprivation of the defendants' constitutional rights under the Fourteenth Amendment of the United States Constitution.

Judgment affirmed. All the Justices concur.

[fol. 75]

IN THE SUPREME COURT OF GEORGIA

JUDGMENT—November 9, 1961

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

NATHANIEL WRIGHT et al.,

v.

THE STATE.

This case came before this court upon a writ of error from the City Court of Savannah; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

[fol. 76]

IN THE SUPREME COURT OF GEORGIA

[Title omitted]

MOTION FOR REHEARING—Filed November 17, 1961

Now Come Nathaniel Wright, Charles L. Smart, Roscoe White, James W. Thomas, Benjamin Carter and Judson Ford, and within the time allowed by law, file this their Motion for Rehearing in the case stated, and for grounds thereof, say:

—1—

This Honorable Court seems to have completely disregarded the fact that the plaintiff's-in-Error were "peace-

ably" playing basketball at the time immediately preceding the arrest.

—2—

The arresting Officers testified that the arrest was made solely because the Plaintiff's-in-Error are Negroes.

—3—

The United States Constitution clearly imposes a prohibition upon a State from denying equal protection of the law to its Citizens.

—4—

An arrest based upon color without any supposed violation of the law constituted a deprivation of the Plaintiff's-in-Error constitutional rights under the Fourteenth Amendment of the United States Constitution.

[fol. 77]

—5—

The evidence shows beyond a reasonable doubt that the Plaintiffs-in-Error were not violating any law other than the fact that they were playing basketball in a municipally owned and operated "white" park, and there was no "breach of the peace" on the part of Plaintiffs-in-Error.

We respectfully submit that the Court, in its opinion in this case, has overlooked the essential fact that there was no disorder at any time on the part of the Plaintiffs-in-Error, either before or after the arrest.

Wherefore, your Petitioners pray that a rehearing be granted in this case, and the position of the Court reversed.

B. Clarence Mayfield, 458½ West Broad Street, Savannah, Georgia; E. H. Gadsden, 458½ West Broad Street, Savannah, Georgia, Attorneys for Plaintiffs-in-Error.

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[fol. 80]

IN THE SUPREME COURT OF GEORGIA

Atlanta

ORDER DENYING MOTION FOR REHEARING—November 21, 1961

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

NATHANIEL WRIGHT et al.,

v.

THE STATE.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

[fol. 81] Clerk's Certificate (omitted in printing).

[fol. 82]

SUPREME COURT OF THE UNITED STATES

No. 729, October Term, 1961

NATHANIEL WRIGHT, et al., Petitioners,

vs.

GEORGIA.

ORDER ALLOWING CERTIORARI—June 25, 1962

The petition herein for a writ of certiorari to the Supreme Court of the State of Georgia is granted, and the case is transferred to the summary calendar. The case is set for argument to follow No. 750.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Frankfurter took no part in the consideration or decision of this petition.

[fol. 83]

IN THE CITY COURT OF SAVANNAH

Georgia,)
Chatham County.)

Criminal No. .....

Violation of Georgia Law 26-5301, Code of 1933, a Misdemeanor

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STATE OF GEORGIA, Plaintiff,

vs.

NATHANIEL WRIGHT, et al., Defendants.

Tried in the City Court of Savannah, Chatham County, Georgia, before the Honorable Columbus E. Alexander, Judge of said Court, with a Jury.

APPEARANCES:

Sylvan A. Garfunkel, Esq., Asst. Solicitor General, Court House, Savannah, Ga., For State.

E. A. Gadsden, Esq., B. C. Mayfield, Esq., Attorneys at Law, Savannah, Georgia, For Defendants.

CHARGE OF THE COURT—Filed July 24, 1961

Judge Alexander:

Gentlemen of the jury, this is the case of the State versus six defendants. I will read them to you, and you will have this with you in your Jury Room when you retire: Nathaniel Wright, Charles L. Smart, Roscoe White, James W. Thomas, Andrew McArthur, and Judson Ford. You will notice one name, that I have circled, that is not being tried, you are not concerned with King not being tried today, so these six defendants are the defendants in this

case in which you are interested during the course of your [fol. 84] deliberation.

These defendants are charged with the violation of Georgia Law 26-5301, Code of Georgia of 1933, which is a Misdemeanor.

To these accusations, or to this accusation against these six defendants, the defendants enter a plea of not guilty, That puts in issue the averments contained in the accusation, as well as the guilt or the innocence of the defendants being tried in this case.

I charge you, gentlemen, that in all criminal cases the defendant (or defendants), if they desire to do so, shall have the right to make to the Court and jury such statement (or statements) of the case as they may deem proper in their defense, and such statement (or statements) shall have such force only as the jury may think right to give said statement (or statements), and they may believe the same in preference to the sworn testimony in the case.

I charge you further, gentlemen, that the burden is upon the State to prove the guilt of these defendants beyond a reasonable doubt; they entered upon the trial of these cases with the presumption of innocence in their favor and this presumption follows them throughout the trial unless and until sufficient evidence has been introduced by the State to satisfy your minds beyond a reasonable doubt of the guilt of these defendants of the charges contained in the accusation.

A reasonable doubt is one that grows out of the testimony or the lack of testimony—it is not an artificial or capricious doubt, but it should be real, honestly and fairly entertained by the jury after every reasonable effort to find out the truth of the case, and if at the end of your deliberation you have this character of doubt upon your minds you should give the defendants the benefit of it and acquit them, but, on the other hand, if you do not have such character of doubt upon your minds, and you believe that the State has made out the case as contained in the accusation under the evidence and under all the facts and circumstances of the case in its entirety beyond a reasonable doubt it will be your duty to convict the defendants.

[fol. 85] The true question in criminal cases is not whether it be possible that the conclusion to which the testimony points may be false, but whether there be sufficient testimony to satisfy your minds beyond a reasonable doubt that these defendants are guilty of the offenses charged in the accusations.

I further charge you, gentlemen of the jury, that you are the judges of both the law and the facts in cases of this nature; the law is given you in charge by the Court, the facts you get from the witnesses, who are sworn and who testify in the case, upon the statements of the defendants, from all the facts and circumstances of the case in its entirety, and during your deliberation you weigh the evidence of the case in the light of the law applicable to the case, as given you in charge by the Court.

As stated to you, in the beginning of this charge, these defendants are charged with the violation of Georgia Law, Code Section 26-5301 of the Georgia Code of 1933. More specifically, these defendants: Benjamin Carter, James W. Thomas, Roscoe White, Charles L. Smart, Judson Ford and Nathaniel Wright, are charged, that in Chatham County, Georgia, with the offense of a misdemeanor, in that said defendants, in said County and State, on the 23rd day of January of this year, in that said defendants did assemble at Daffin Park for the purpose of disturbing the peace and they refused to disperse on being commanded to do so by Sheriff, Constable and Peace Officers, to-wit: W. H. Thompson and G. W. Hillis, contrary to the laws of this State, the good order, peace and dignity thereof. I further charge you that this accusation is brought pursuant to Code Section 26-5301 of the 1933 Criminal Code of Georgia, the heading of the Section under which this accusation is brought is "Unlawful Assembly", and it reads as follows:

> "Any two or more persons, who shall assemble for the purpose of disturbing the public peace, or committing any lawful act, and shall not disperse on being com-
> [fol. 86] manded to do so by a Judge, Justice, Sheriff, Constable, Coroner, or any other Peace Officer, shall be guilty of a misdemeanor."

That is the law that these defendants are charged with violating, and further in connection with that I charge you that the term "Other Peace Officer", mentioned in this Section, would include police officers of the Police Department of the City of Savannah, Georgia.

That, gentlemen, is the law of the case. You are the judges of the facts and there is nothing left for me to do now except instruct you as to the form of your verdict.

If you find the defendants guilty the form of your verdict, in substance, should be: "We the jury find the defendants guilty"—see that your verdict is dated and signed by your foreman.

If you find the defendants not guilty the form of your verdict, in substance, should be: "We the jury find the defendants not guilty", see that your verdict is signed and dated by your foreman.

Thank you gentlemen, now you may retire and deliberate upon your verdict.

End of Charge

Reporter's Certificate to foregoing paper (omitted in printing).

[fol. 87] The above and foregoing 3 pages of typewritten material are approved as containing the correct charge as given the jury in the aforesaid case, and the same are hereby ordered filed as part of the record in said case.

This 24th day of July, 1961.

Columbus E. Alexander, Judge, City Court of Savannah.

[File endorsement omitted]

[fol. 88]

Violation of Georgia Law 26-5301, Code of 1933, a Misdemeanor

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STATE OF GEORGIA,

vs.

NATHANIEL WRIGHT, et al.

I, Jeff F. Dickey, Clerk of the City Court of Savannah, do hereby certify that the attached and foregoing, is a true, correct and complete transcript of the Charge of the Court rendered by Judge Columbus E. Alexander, Judge of the City Court of Savannah at the trial of this case.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the City Court of Savannah this 23rd day of July, 1962.

Jeff F. Dickey, Clerk, City Court of Savannah, Georgia.

[SEAL]